



Reprinted  
March 25, 2005

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## ENGROSSED SENATE BILL No. 213

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DIGEST OF SB 213 (Updated March 24, 2005 4:50 pm - DI 92)

**Citations Affected:** IC 6-2.5; IC 6-3; noncode.

**Synopsis:** Taxation. Brings Indiana law into conformance with the requirements of the Streamlined Sales and Use Tax Agreement concerning: (1) the definition of tobacco; and (2) monetary allowances given to sellers and certified service providers for collecting sales and use taxes. Allows a partial sales tax exemption for a cargo trailer or a recreational vehicle and a full exemption for an aircraft purchased in Indiana, if it is to be titled or registered for use in another state or country. For cargo trailers and recreational vehicles that will be registered in a state or country that imposes a sales, use, or similar tax on the transaction, the exemption is equal to the sales tax that would be imposed in the other state or country if the transaction had occurred in that state or country. For cargo trailers and recreational vehicles that will be registered in a state or country that does not impose a sales, use or similar tax on the transaction, the exemption is equal to the sales tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana. Provides that income received by a nonresident limited partner from an investment limited partnership is not adjusted gross income derived from sources within Indiana regardless of whether the investment limited partnership's commercial domicile is in Indiana. Establishes a \$1,000 adjusted gross income tax deduction for the purchaser of a single family or two family residence constructed with steel framing manufactured in the United States.

**Effective:** July 1, 2005; January 1, 2006.

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**Young R Michael, Mishler,  
Riegsecker, Zakas, Kruse, Landske,  
Miller, Alting, Clark**

(HOUSE SPONSORS — FRIEND, MCCLAIN, AYRES)

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January 4, 2005, read first time and referred to Committee on Tax and Fiscal Policy.  
February 8, 2005, amended, reported favorably — Do Pass.  
February 14, 2005, read second time, ordered engrossed.  
February 15, 2005, engrossed. Read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 7, 2005, read first time and referred to Committee on Ways and Means.  
March 17, 2005, amended, reported — Do Pass.  
March 24, 2005, read second time, amended, ordered engrossed.

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ES 213—LS 6615/DI 92+



Reprinted  
March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 213

A BILL FOR AN ACT to amend the Indiana Code concerning  
taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars, chewing or**  
4 **pipe tobacco, or any other item that contains tobacco.**

5 SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Sales of food  
7 and food ingredients for human consumption are exempt from the state  
8 gross retail tax.

9 (b) For purposes of this section, the term "food and food ingredients  
10 for human consumption" includes the following items if sold without  
11 eating utensils provided by the seller:

12 (1) Food sold by a seller whose proper primary NAICS  
13 classification is manufacturing in sector 311, except subsector  
14 3118 (bakeries).

15 (2) Food sold in an unheated state by weight or volume as a single  
16 item.

17 (3) Bakery items, including bread, rolls, buns, biscuits, bagels,

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croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); **or**
- (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); **or**

**(8) tobacco.**

SECTION 3. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property; and**
- (3) designed for being drawn by a motor vehicle.**

**The term includes pole trailers, boat trailers, utility trailers, semitrailers (as defined in IC 9-13-2-164(a)), and two (2) wheeled homemade trailers.**

**(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.**

**(c) A transaction involving a cargo trailer, a recreational vehicle, or an aircraft is exempt from the state gross retail tax if:**

- (1) the purchaser is a nonresident;**
- (2) upon receiving delivery of the cargo trailer, recreational**

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1 vehicle, or aircraft, the person transports it within thirty (30)  
2 days to a destination outside Indiana;

3 (3) the cargo trailer, recreational vehicle, or aircraft will be  
4 titled or registered for use in another state or country; and

5 (4) the cargo trailer, recreational vehicle, or aircraft will not  
6 be titled or registered for use in Indiana.

7 The amount of the exemption for a cargo trailer or a recreational  
8 vehicle is determined in subsection (d).

9 (d) If a purchaser affirms that a cargo trailer or recreational  
10 vehicle will be registered in a state or country that does not impose  
11 a sales, use, or similar tax on the transaction, the amount of the  
12 exemption for the cargo trailer or recreational vehicle under this  
13 section is equal to the state gross retail tax that would be imposed  
14 on the transaction if the cargo trailer or recreational vehicle were  
15 registered in Indiana. If a purchaser affirms that a cargo trailer or  
16 recreational vehicle will be registered in a state or country that  
17 does impose a sales, use, or similar tax on the transaction, the  
18 amount of the exemption for the cargo trailer or recreational  
19 vehicle under this section is equal to the sales, use, or similar tax  
20 that would have been imposed on the transaction under the laws of  
21 the state or country in which the purchaser affirms the cargo  
22 trailer or recreational vehicle will be registered. The amount of the  
23 exemption under this section may not exceed the amount of the  
24 state gross retail tax that would be imposed on the transaction if  
25 the cargo trailer or recreational vehicle were registered in Indiana.

26 (e) Any state gross retail tax due after the application of the  
27 exemption provided by this section must be paid to the retail  
28 merchant.

29 (f) A purchaser must claim an exemption under this section by  
30 submitting to the retail merchant an affidavit stating the  
31 purchaser's intent to:

32 (1) transport the cargo trailer, recreational vehicle, or aircraft  
33 to a destination outside Indiana within thirty (30) days after  
34 delivery; and

35 (2) title or register the cargo trailer, recreational vehicle, or  
36 aircraft for use in another state.

37 The department shall prescribe the form of the affidavit. The  
38 affidavit must identify the state in which the cargo trailer,  
39 recreational vehicle, or aircraft will be titled or registered.

40 (g) The department shall provide the information necessary to  
41 calculate the amount of an exemption claimed under this section to  
42 retail merchants in the business of selling cargo trailers or

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recreational vehicles.

SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

**(d) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.**

SECTION 5. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 34. (a) "Investment limited partnership" means an entity that is treated as a partnership for federal income tax purposes that meets the following requirements:

(1) At least ninety percent (90%) of the value of the partnership's total assets consists of qualifying investment securities, deposits at banks or other financial institutions,

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and office space and equipment reasonably necessary to carry out the activities of a limited investment partnership.

(2) At least ninety percent (90%) of the partnership's gross income consists of dividends and gains from the sale or exchange of qualifying investment securities.

(3) Except as provided in subsection (b), the partnership is not a dealer in qualifying investment securities.

(b) An investment limited partnership may be a dealer in commodities.

SECTION 6. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 35. (a) As used in section 34 of this chapter, "qualifying investment securities" refers to any of the following:

(1) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(2) Bonds, debentures, and other debt securities.

(3) Foreign and domestic currency deposits secured by federal, state, or local governmental agencies.

(4) Mortgage or asset-backed securities secured by federal, state, or local governmental agencies.

(5) Repurchase agreements and loan participations.

(6) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(7) Stock and bond index securities and futures contracts and other similar financial securities and futures contracts on those securities.

(8) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in subdivisions (1) through (7).

(9) Regulated futures contracts.

(10) Except as provided in subsection (b), commodities (not described in Section 1221(a)(1) of the Internal Revenue Code) or futures, forwards, and options with respect to the commodities.

(11) Derivatives.

(12) A partnership interest in another limited investment partnership.

(b) A physical commodity is not a qualifying investment security if an investment limited partnership acquires title to the commodity in the investment limited partnership's capacity as a dealer of the commodity.

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SECTION 7. IC 6-3-2-2 IS AMENDED TO READ AS FOLLOWS  
 [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) With regard to  
 corporations and nonresident persons, "adjusted gross income derived  
 from sources within Indiana", for the purposes of this article, shall  
 mean and include:

- (1) income from real or tangible personal property located in this  
 state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state;  
 and
- (5) income from stocks, bonds, notes, bank deposits, patents,  
 copyrights, secret processes and formulas, good will, trademarks,  
 trade brands, franchises, and other intangible personal property if  
 the receipt from the intangible is attributable to Indiana under  
 section 2.2 of this chapter.

In the case of nonbusiness income described in subsection (g), only so  
 much of such income as is allocated to this state under the provisions  
 of subsections (h) through (k) shall be deemed to be derived from  
 sources within Indiana. In the case of business income, only so much  
 of such income as is apportioned to this state under the provision of  
 subsection (b) shall be deemed to be derived from sources within the  
 state of Indiana. In the case of compensation of a team member (as  
 defined in section 2.7 of this chapter) only the portion of income  
 determined to be Indiana income under section 2.7 of this chapter is  
 considered derived from sources within Indiana. In the case of a  
 corporation that is a life insurance company (as defined in Section  
 816(a) of the Internal Revenue Code) or an insurance company that is  
 subject to tax under Section 831 of the Internal Revenue Code, only so  
 much of the income as is apportioned to Indiana under subsection (r)  
 is considered derived from sources within Indiana. **For purposes of  
 this article, income received by a nonresident limited partner after  
 December 31, 2005, from an investment limited partnership is not  
 adjusted gross income derived from sources within Indiana,  
 regardless of whether the investment limited partnership's  
 commercial domicile is in Indiana.**

(b) Except as provided in subsection (l), if business income of a  
 corporation or a nonresident person is derived from sources within the  
 state of Indiana and from sources without the state of Indiana, then the  
 business income derived from sources within this state shall be  
 determined by multiplying the business income derived from sources  
 both within and without the state of Indiana by a fraction, the

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numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula  $(1+N)^4-1$ , where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property

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owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
  - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
  - (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the

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f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

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- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) **Subject to subsection (a)**, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) **Subject to subsection (a)**, interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same

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interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

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(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 8. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 20. (a) As used in this section:**

(1) "steel framing" refers to steel framing manufactured in the United States; and

(2) "qualifying residence" means a single family or two (2) family residence constructed wholly or partially with steel framing.

(b) For taxable years beginning after December 31, 2005, a resident individual taxpayer is entitled to a deduction from the taxpayer's adjusted gross income for a particular taxable year if, during that taxable year, the taxpayer acquires title to a qualifying residence that the taxpayer purchases from the builder of the qualifying residence.

(c) The amount of the deduction under subsection (b) in a particular taxable year is the lesser of:

(1) the part of the purchase price of the qualifying residence attributable to the cost of materials for the steel framing; or

(2) one thousand dollars (\$1,000).

(d) To obtain the deduction provided by this section, the taxpayer must file with the department:

(1) proof of the cost of materials for the steel framing; and

(2) a list of the persons or businesses that supplied materials for the steel framing.

SECTION 9. [EFFECTIVE JULY 1, 2005] IC 6-2.5-5-39, as added by this act, applies to transactions occurring after June 30, 2005.

SECTION 10. [EFFECTIVE JANUARY 1, 2006] (a) IC 6-3-2-2, as amended by this act, applies only to taxable years beginning after December 31, 2005.

(b) IC 6-3-1-34 and IC 6-3-1-35, both as added by this act, apply only to taxable years beginning after December 31, 2005.

SECTION 11. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Mishler be added as coauthor of Senate Bill 213.

YOUNG R MICHAEL

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SENATE MOTION

Madam President: I move that Senators Riegsecker, Zakas, Kruse and Landske be added as coauthors of Senate Bill 213.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 213, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[JUNE 1, 2005]".

Page 1, line 3, after "39." insert **"(a) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.**

**(b)".**

Page 1, line 3, delete "motor vehicle, a trailer,".

Page 1, line 4, delete "a watercraft," and insert **"recreational vehicle"**.

Page 1, between lines 5 and 6, begin a new line block indented and insert:

**"(1) the purchaser is a nonresident;"**.

Page 1, line 6, delete "(1)" and insert **"(2)"**.

Page 1, line 6, delete "motor vehicle, trailer,".

Page 1, line 7, delete "watercraft," and insert **"recreational vehicle"**.

Page 1, line 7, delete "immediately".

Page 1, line 7, after "it" insert **"within thirty (30) days"**.

Page 1, line 9, delete "(2) the motor vehicle, trailer, watercraft," and insert **"(3) the recreational vehicle"**.

Page 1, line 11, delete "(3) the motor vehicle, trailer, watercraft," and insert **"(4) the recreational vehicle"**.

Page 1, between lines 12 and 13, begin a new line blocked left and insert:

**"The amount of the exemption for a recreational vehicle is determined in subsection (c).**

**(c) The amount of the exemption for a recreational vehicle under this section is equal to the amount of:**

**(1) the state gross retail tax that would be imposed on the transaction if the recreational vehicle were registered in Indiana; minus**

**(2) the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state in which the purchaser affirms the recreational vehicle will be registered.**



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The amount of the exemption under this section may not exceed the amount of the state gross retail tax that would be imposed on the transaction if the recreational vehicle were registered in Indiana. A retail merchant that accepts an exemption claim for a recreational vehicle under this section shall, within sixty (60) days after the date of the transaction, have on file a copy of the purchaser's title or registration of the recreational vehicle outside Indiana or pay to the state the amount of the exemption.

(d) Any state gross retail tax due after the application of the exemption provided by this section must be paid to the retail merchant.

(e) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the recreational vehicle or aircraft to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register the recreational vehicle or aircraft for use in another state.

The department shall prescribe the form of the affidavit. The affidavit must identify the state in which the recreational vehicle will be titled or registered. Within sixty (60) days after the date of the transaction, the purchaser shall provide to the retail merchant a copy of the purchaser's title or registration of the recreational vehicle outside Indiana.

(f) The department shall provide the information necessary to calculate the amount of an exemption claimed under this section to retail merchants in the business of selling recreational vehicles."

Page 1, line 14, delete "June 30," and insert "**May 31**,".

Page 1, after line 14, begin a new paragraph and insert:

"SECTION 3. An emergency is declared for this act."

and when so amended that said bill do pass.

(Reference is to SB 213 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Madam President: I move that Senators Miller, Alting and Clark be added as coauthors of Engrossed Senate Bill 213.

YOUNG R MICHAEL

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 213, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE JULY 1, 2005]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.**

SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 20.** (a) Sales of food and food ingredients for human consumption are exempt from the state gross retail tax.

(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:

- (1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
- (2) Food sold in an unheated state by weight or volume as a single item.
- (3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its

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Food Code so as to prevent food borne illnesses); ~~or~~  
 (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); **or**  
**(8) tobacco."**

Page 1, line 3, delete ""recreational vehicle"" and insert **""cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property; and**
- (3) designed for being drawn by a motor vehicle.**

**The term includes pole trailers, boat trailers, utility trailers, semitrailers (as defined in IC 9-13-2-164(a)), and two (2) wheeled homemade trailers."**

Page 1, line 4, before "means" begin a new paragraph and insert:  
**"(b) As used in this section, "recreational vehicle"."**

Page 1, line 9, delete "(b)" and insert **"(c)"**.

Page 1, line 9, after "involving" insert **"a cargo trailer,"**.

Page 1, line 9, after "vehicle" insert **", "**.

Page 1, line 12, after "the" insert **"cargo trailer,"**.

Page 1, line 12, after "vehicle" insert **", "**.

Page 1, line 15, after "the" insert **"cargo trailer,"**.

Page 1, line 15, after "vehicle" insert **", "**.

Page 1, line 17, after "the" insert **"cargo trailer,"**.

Page 1, line 17, after "vehicle" insert **", "**.

Page 2, line 2, after "for" insert **"a cargo trailer or"**.

Page 2, line 3, delete "(c)." and insert **"(d)." "**.

Page 2, line 4, delete "(c)" and insert **"(d)"**.

Page 2, line 4, after "for" insert **"a cargo trailer or"**.

Page 2, line 7, after "the" insert **"cargo trailer or"**.

Page 2, line 11, after "the" insert **"cargo trailer or"**.

Page 2, line 14, after "the" insert **"cargo trailer or"**.

Page 2, delete lines 15 through 19.

Page 2, line 20, delete "(d)" and insert **"(e)"**.

Page 2, line 23, delete "(e)" and insert **"(f)"**.

Page 2, line 26, after "the" insert **"cargo trailer,"**.

Page 2, line 26, after "vehicle" insert **", "**.

Page 2, line 29, after "the" insert **"cargo trailer,"**.

Page 2, line 29, after "vehicle" insert **", "**.

Page 2, line 32, after "which the" insert **"cargo trailer,"**.

Page 2, line 32, after "vehicle" insert **", or aircraft"**.

Page 2, line 35, after "registration of the" insert **"cargo trailer,"**.

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Page 2, line 36, after "vehicle" insert ", or aircraft".

Page 2, line 37, delete "(f)" and insert "(g)".

Page 2, line 39, after "selling" insert "**cargo trailers or**".

Page 2, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

**(d) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.**

SECTION 5. IC 6-3-2-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 20. (a) As used in this section:**

**(1) "steel framing" refers to steel framing manufactured in the United States; and**

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(2) "qualifying residence" means a single family or two (2) family residence constructed wholly or partially with steel framing.

(b) For taxable years beginning after December 31, 2005, a resident individual taxpayer is entitled to a deduction from the taxpayer's adjusted gross income for a particular taxable year if, during that taxable year, the taxpayer acquires title to a qualifying residence that the taxpayer purchases from the builder of the qualifying residence.

(c) The amount of the deduction under subsection (b) in a particular taxable year is the lesser of:

- (1) the part of the purchase price of the qualifying residence attributable to the cost of materials for the steel framing; or
- (2) one thousand dollars (\$1,000).

(d) To obtain the deduction provided by this section, the taxpayer must file with the department:

- (1) proof of the cost of materials for the steel framing; and
- (2) a list of the persons or businesses that supplied materials for the steel framing."

Page 2, line 41, delete "May 31," and insert "**June 30**,".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 213 as printed February 9, 2005.)

ESPICH, Chair

Committee Vote: yeas 19, nays 2.

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 213 be amended to read as follows:

Page 3, delete lines 9 through 21, begin a new paragraph and insert:

**"(d) If a purchaser affirms that a cargo trailer or recreational vehicle will be registered in a state or country that does not impose a sales, use, or similar tax on the transaction, the amount of the exemption for the cargo trailer or recreational vehicle under this section is equal to the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana. If a purchaser affirms that a cargo trailer or recreational vehicle will be registered in a state or country that does impose a sales, use, or similar tax on the transaction, the amount of the exemption for the cargo trailer or recreational vehicle under this section is equal to the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state or country in which the purchaser affirms the cargo trailer or recreational vehicle will be registered. The amount of the exemption under this section may not exceed the amount of the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana."**

(Reference is to ESB 213 as printed March 18, 2005.)

WALORSKI

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 HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 213 be amended to read as follows:

Page 3, line 35, delete "Within".

Page 3, delete lines 36 through 39.

(Reference is to Engrossed Senate Bill 213 as printed March 18, 2005.)

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## HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 213 be amended to read as follows:

Page 4, between lines 34 and 35, begin a new paragraph and insert:  
**"SECTION 5. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 34. (a) "Investment limited partnership" means an entity that is treated as a partnership for federal income tax purposes that meets the following requirements:**

- (1) At least ninety percent (90%) of the value of the partnership's total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry out the activities of a limited investment partnership.**
- (2) At least ninety percent (90%) of the partnership's gross income consists of dividends and gains from the sale or exchange of qualifying investment securities.**
- (3) Except as provided in subsection (b), the partnership is not a dealer in qualifying investment securities.**

**(b) An investment limited partnership may be a dealer in commodities.**

**SECTION 6. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 35. (a) As used in section 34 of this chapter, "qualifying investment securities" refers to any of the following:**

- (1) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.**
- (2) Bonds, debentures, and other debt securities.**
- (3) Foreign and domestic currency deposits secured by federal, state, or local governmental agencies.**
- (4) Mortgage or asset-backed securities secured by federal, state, or local governmental agencies.**
- (5) Repurchase agreements and loan participations.**
- (6) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.**
- (7) Stock and bond index securities and futures contracts and other similar financial securities and futures contracts on those securities.**
- (8) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in subdivisions (1) through (7).**

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**(9) Regulated futures contracts.**

**(10) Except as provided in subsection (b), commodities (not described in Section 1221(a)(1) of the Internal Revenue Code) or futures, forwards, and options with respect to the commodities.**

**(11) Derivatives.**

**(12) A partnership interest in another limited investment partnership.**

**(b) A physical commodity is not a qualifying investment security if an investment limited partnership acquires title to the commodity in the investment limited partnership's capacity as a dealer of the commodity.**

SECTION 7. IC 6-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r)

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is considered derived from sources within Indiana. **For purposes of this article, income received by a nonresident limited partner after December 31, 2005, from an investment limited partnership is not adjusted gross income derived from sources within Indiana, regardless of whether the investment limited partnership's commercial domicile is in Indiana.**

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with

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the formula  $(1+N)^4-1$ , where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
  - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
  - (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total

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sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

- (1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or
- (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:
  - (A) the purchaser is the United States government; or
  - (B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the

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numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) **Subject to subsection (a)**, capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) **Subject to subsection (a)**, interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within

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the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The

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petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance."

Page 5, between lines 18 and 19, begin a new paragraph and insert:

**"SECTION 10. [EFFECTIVE JANUARY 1, 2006] (a) IC 6-3-2-2, as amended by this act, applies only to taxable years beginning after December 31, 2005.**

**(b) IC 6-3-1-34 and IC 6-3-1-35, both as added by this act, apply only to taxable years beginning after December 31, 2005."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 213 as printed March 18, 2005.)

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